

REMARKS

Claims 1-42 were pending. The specification has been amended, as discussed below, to overcome objections to the disclosure. In response to the Examiner's restriction requirement under 35 U.S.C. §121, depicted on page 2 of the Office Action of July 15, 2004, Applicants have elected Group III, claims 28-42, with traverse. However, in order to expedite prosecution, Applicants have canceled claims 1-27 without prejudice to presenting these claims in a continuation or other application. Therefore, claims 28-42 will be pending upon entry of this amendment. Reconsideration of the application upon entry of the amendment is respectfully requested.

On page 4, line 19, the Examiner has rejected claims 28-42 as unpatentable over claims 1-4 of United States Patent No. 6,645,947 under the judicially created doctrine of obviousness-type double patenting. Although Applicants respectfully traverse this rejection, in the interest of furthering prosecution, Applicants file herewith a Terminal Disclaimer to overcome this rejection as suggested by the Examiner on page 4, line 13 of the Office Action.

In response to the Examiner's objection to the disclosure on page 4, line 26 of the Office Action, Applicants have amended the specification on page 1, line 7 to update the status of the parent application. No new matter has been added to the specification.

The Examiner on page 5, lines 1-22 of the Office Action objects to the specification as improperly incorporating by reference essential subject matter into the application. Applicants respectfully disagree with the Examiner that the material incorporated at page 5 at lines 17-18 and page 8, lines 4-5 is essential and thus traverse this objection.

The paragraph beginning on page 5, line 10 is a discussion of prior art. The two articles discussed chitin and some of its uses, while the patent is merely used as a description of the well-known material N, O-carboxymethylchitosan or NOCC. The *Hayes* United States Patent No. 4,619,995 issued in 1986. There are numerous other patents which describe NOCC and its properties since this time, including the two other patents cited by the Examiner. As such, the material from the *Hayes* Patent is not essential and the prohibition of incorporation of essential material is hereby traversed.

With respect to the other incorporation by reference on page 8, lines 4-5, that of United States Patent No. 4,615,697, this patent is cited to show a test procedure for bioadhesion. However, this test procedure was modified and another used. As stated in the same paragraph, the test procedure used is described in detail in Example 1 of the present application. Thus, the material incorporated from United States Patent No. 4,615,697 also is not essential. In addition, the incorporation by reference clearly delineated what material is incorporated, thus meeting the statutory requirement. Therefore, Applicants respectfully request that the Examiner withdraw this portion of the rejection.

However, in the interest of expediting prosecution, Applicants have amended the specification to remove these two incorporations by reference as suggested by the Examiner. No new matter has been added to the specification.

Conclusion

Cancellation of claims 1-27 should in no way be construed as an acquiescence to any of the Examiner's objections and/or rejections. The cancellation of the claims have being made solely to expedite prosecution of the above-identified application. Applicants reserve the option to further prosecute the same or similar claims in the present or another patent application.

In light of the foregoing amendment, response and the filing of the Terminal Disclaimer, Applicants have overcome the outstanding rejection and objections raised by the Examiner in the Office Action. Applicants consider that the claims as written are in condition for allowance. Prompt notification of allowance is respectfully requested.

Serial No.: 10/672,072

If the Examiner believes that a telephone conversation with Applicant's attorney/agent would further prosecution of this application, the Examiner is cordially invited to call the undersigned attorney/agent of record.

Respectfully submitted,

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